

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARLENE ELLIOTT, a single individual,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., a
foreign corporation,

Defendant.

No. C07-05453 RBL

DECLARATION OF LAURA M. SOLIS IN
SUPPORT OF DEFENDANT UNITED
PARCEL SERVICE, INC.'S MOTION TO
DISMISS PLAINTIFF'S CLAIMS WITH
PREJUDICE

I, LAURA M. SOLIS, declare and state as follows:

1. I am one of the attorneys at Perkins Coie, LL representing United Parcel Service, Inc. ("UPS") in this case, and make this declaration based on my personal knowledge of the facts set forth herein.

2. While plaintiff Marlene Elliott ("plaintiff") was still represented by counsel, UPS and plaintiff exchanged initial disclosures and written discovery requests pursuant to the Court's discovery orders. UPS complied with all of plaintiff's discovery requests in a timely manner and produced all relevant documents, except as protected by the attorney-client privilege and/or the work product doctrine, or filed appropriate objections to plaintiff's discovery requests. Plaintiff's answers and responses to UPS's discovery requests, however, were incomplete even when she was represented by counsel.

DEFENDANT UNITED PARCEL SERVICE,
INC.'S MOTION TO DISMISS (NO. C07-05453
RBL) – 1

00895-1076/LEGAL15103677.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
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1 3. The parties conducted mediation on April 18, 2008 pursuant to CR 39.1(c)(3) and
2 the Court's scheduling order. The parties continued to engage in settlement discussions after
3 mediation until plaintiff's attorneys abruptly moved to withdraw from the case on May 28, 2008.
4

5 4. On October 2, 2007, the arbitration entitled In the Matter of the Arbitration
6 between United Parcel Service and Marlene Elliott, Teamsters Local Union #174, FCMS No.
7 070604-57258-8 was held before Arbitrator David Gaba on plaintiff's grievance challenging her
8 discharge. True and correct copies of excerpts of the Transcript of Proceedings from the
9 arbitration are attached hereto as Exhibit A.
10

11 5. I received a copy of plaintiff's medical records from plaintiff's treating physician,
12 Dr. Craig Arntz, in response to a records request. A true and correct copy of the February 21,
13 2007 chart note I received from Dr. Arntz's office is attached hereto as Exhibit B.
14

15 6. On September 12, 2008, UPS filed a motion to compel plaintiff's complete
16 answers and responses to UPS discovery requests. UPS filed the motion after plaintiff had
17 repeatedly refused to communicate with UPS concerning her failure to cooperate in discovery.
18 These facts are more fully set forth in my declaration in support of UPS's Motion to Compel and
19 the supporting exhibits thereto. I will summarize plaintiff's non-response for the Court's
20 convenience here. On June 29, 2008, I sent a letter to plaintiff requesting complete responses to
21 UPS's written discovery requests. Plaintiff did not respond to this letter. On August 22, 2008, I
22 sent a second letter to plaintiff requesting that plaintiff provide the overdue discovery
23 immediately. Although plaintiff received the letter on September 2, 2008, she did not respond.
24 On August 28, 2008, I called plaintiff to discuss her overdue discovery. I left a voicemail
25 message requesting that plaintiff call me to discuss plaintiff's overdue discovery responses. I
26 further explained that UPS would seek sanctions if no response or contact was forthcoming.
27 Plaintiff did not return my call. On August 29, 2008, I called plaintiff again to request a
28 discovery conference. Someone answered plaintiff's phone and then hung up on me. I called
29 back and left a voicemail message requesting an immediate conference. Plaintiff did not return
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DECLARATION IN SUPPORT OF DEFENDANT
UNITED PARCEL SERVICE, INC.'S MOTION
TO DISMISS (NO. C07-05453 RBL) – 2

00895-1076/LEGAL15103677.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
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1 my call. On August 29, 2008, I sent a letter to plaintiff requesting an immediate discovery
2 conference. Plaintiff did not respond to my letter. On September 3, 2008, I sent a fourth letter to
3 plaintiff requesting a Rule 37 conference. Plaintiff did not respond. The Court granted UPS's
4 motion to compel on October 6, 2008.
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9 7. UPS noted plaintiff's deposition for September 16, 2008. At 8:00 a.m., on the
10 morning of her deposition, plaintiff called a receptionist at Perkins Coie claiming that she could
11 not make the deposition because she was "having a heart attack." Before the receptionist could
12 transfer the call to me or Mr. Reynvaan, plaintiff stated that she could not talk any longer
13 "because she needed to get back on oxygen." At that time, we were not aware that on September
14 8, 2008, plaintiff had moved for an unlimited extension of time to find new counsel and had
15 asked the Court postpone her September 16 deposition. We only received notification of the
16 motion through the Court's electronic filing notification system on September 17, 2008. On
17 September 16, 2008, we rescheduled plaintiff's deposition for Friday, September 19, 2008. I
18 sent plaintiff a letter and left her a voicemail message requesting that she call us if she could not
19 make the scheduled deposition. The next day, plaintiff called me and stated that she would not
20 be attending the deposition on Friday. She did not mention any medical issues or sound as if she
21 was in distress. When I asked why, she stated only "I can't miss any more work." When I asked
22 about her future availability, she stated "I don't know when I'll be available."
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37 8. On October 7, 2008, I sent a letter to plaintiff by regular and certified mail
38 providing her with a copy of the Court's October 6, 2008 Order Granting Defendant's Motion to
39 Compel and further warned plaintiff that she may be subject to sanctions if she did not comply
40 with the Court's Order. A true and correct copy of the October 7, 2008 letter is attached hereto
41 as Exhibit C.
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47 9. On October 31, 2008, I called plaintiff regarding her failure to comply with the
48 Court's Order compelling discovery. Plaintiff told me that she would provide discovery "when I
49 get the time," cut me off by saying "Have a God blessed day," and then hung up the phone. I
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DECLARATION IN SUPPORT OF DEFENDANT
UNITED PARCEL SERVICE, INC.'S MOTION
TO DISMISS (NO. C07-05453 RBL) – 3

00895-1076/LEGAL15103677.1

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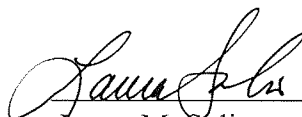
1 sent another letter to plaintiff by regular and certified mail requesting that she comply with the
 2 Court's Order by November 7. Attached hereto as Exhibit D is a true and correct copy of the
 3 October 31, 2008 letter. Since her attorneys' withdrawal, plaintiff has not provided a single
 4 answer or document in response to UPS's written discovery requests, and therefore has not
 5 complied with the Court's October 6 Order.
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10 10. Although UPS had still not received plaintiff's complete discovery responses, on
 11 December 10, 2008, UPS re-noted plaintiff's videotaped deposition for December 18, 2008. We
 12 sent plaintiff notice of her deposition by regular and certified mail. A copy of the notice of
 13 rescheduled videotaped deposition is attached hereto as Exhibit E. On December 18, plaintiff
 14 again failed to appear at Perkins Coie's office for her deposition. She did not contact our office
 15 either to inform counsel that she would not appear or to explain her failure to appear. To this
 16 date, plaintiff has not bothered to contact our office to explain her absence on December 18 or to
 17 try to reschedule her deposition.
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26 11. UPS has incurred attorneys' fees preparing for the September 16, September 19
 27 and December 18 depositions of plaintiff, as well as cancellation fees for the videographer and
 28 court reporter on each of these dates. Additional attorneys' fees will be incurred to prepare for
 29 plaintiff's deposition again. Most of these expenses would not have been necessary if plaintiff
 30 had cooperated in the discovery process, complied with this Court's Order compelling discovery,
 31 or communicated with UPS in a timely manner that she would not attend her depositions.
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41 I declare under penalty of perjury under the laws of the State of Washington and the
 42 United States that the foregoing is true and correct.
 43

44 Signed at Seattle, Washington, this 31 day of December, 2008.
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 Laura M. Solis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing
DECLARATION OF LAURA M. SOLIS IN SUPPORT OF DEFENDANT UNITED PARCEL
SERVICE, INC.'S MOTION TO DISMISS to the following via U.S. Mail, postage prepaid,
before the hour of 5:00 pm, on December 31, 2008:

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

Ms. Marlene Elliott
30930 - 16th Place S.W., #C
Federal Way, WA 98023
Attorneys for Plaintiff

DATED: December 31, 2008

s/ Michael T. Reynvaan, WSBA No. 12943

MReynvaan@perkinscoie.com
Laura M. Solis, WSBA No. 36005
LSolis@perkinscoie.com
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Attorneys for Defendant
UNITED PARCEL SERVICE, INC.

Arbitration 10/2/07

Page 1

In the Matter of the)
Arbitration between)
)
United Parcel Service)
Service,) FMCS No. 070604-57258-8
)
Company,)
)
and)
)
Marlene Elliott, Teamsters)
Local Union #174)
)
Union,)

TRANSCRIPT OF PROCEEDINGS

October 2, 2007
1201 Third Avenue, Suite 4800
Seattle, Washington

REPORTED BY:

JOHANNA CHAPIN
CCR NO. 334
JOB NO. 662405

Exhibit A

Declaration of
L. Solis -6

Esquire Depositions
206-624-9099

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Page 2

A-P-P-E-A-R-A-N-C-E-S

Arbitrator: DAVID GABA
Compass Law Group
1200 Fifth Avenue, Suite 1900
Seattle, Washington 98101
(206) 728-1110

For the Union: DAVID W. BALLEW
Reid, Pedersen, McCarthy & Ballew, LLP
101 Elliott Avenue West, Suite 550
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For the Employer: MICHAEL T. REYNVAAN
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LAURA M. SOLIS
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Lsolis@perkinscoie.com

Also Present: MARLENE ELLIOTT
BILL BYINGTON
MILT CRAFTON
SUSAN SANDOVAL
TED BUNSTINE
MURRAY BOURQUE

1 Q. What is it?

2 A. This is the decision from the five states
3 grievance panel in July of 2006 in which Marlene's
4 grievance regarding the air shuttle job, her claim for that
5 work, was denied.

6 Q. Okay. And this is -- you testified previously
7 about this grievance and that resolution, correct?

8 A. Yes.

9 MR. REYNVAAN: Okay. Move for the admission of 4.

10 ARBITRATOR GABA: Any objection?

11 MR. BALLEW: No.

12 ARBITRATOR GABA: Employer 4 is admitted.

13 (Employer Exhibit 4 is admitted.)

14 Q. (By Mr. Reynvaan) Who ultimately made the
15 decision to discharge Ms. Elliott?

16 A. That would be me.

17 Q. Okay. And why did you decide discharge was
18 appropriate?

19 A. Because, based on the evidence that I had in front
20 of me, it was apparent that Marlene had indeed suggested to
21 the doctor that there was a deal and that the only way the
22 deal would work is that if she were to receive a full
23 release.

24 Q. And did she, in fact, receive a full release?

25 A. Based on -- I mean, you're asking me. I look

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1 at -- she received a notice of full release, yes, that's
2 correct.

3 Q. Okay. That was --

4 A. Yes.

5 Q. Okay. What is UPS's policy on honesty?

6 A. Well, it's a core value at UPS. It's found within
7 our policy book and it was -- and most policies were
8 largely established by our founder, Jim Casey. It's a core
9 value, and we do have a strict policy on honesty and
10 integrity.

11 Q. And do employees typically sign an honesty policy?

12 A. Yes.

13 MR. REYNVAAN: Okay. I'd like this marked as
14 Company 5.

15 (Employer Exhibit 5 was marked.)

16 ARBITRATOR GABA: So marked.

17 Q. (By Mr. Reynvaan) Do you recognize -- do you
18 recognize this document?

19 A. Yes, I do.

20 Q. Okay. Did I give you the wrong number?

21 A. Yes.

22 Q. Okay. What is that document?

23 A. This is a document -- it's titled Honesty in
24 Employment, and it establishes the policy book section on
25 honesty and integrity, and it also speaks to the

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1 consequences of dishonesty.

2 Q. Does it appear to be signed by an employee?

3 A. Yes, it is.

4 Q. And who does it appear to be signed by?

5 A. Marlene Elliott.

6 Q. Is the company's philosophy and policy about --
7 excuse me.

8 MR. REYNVAAN: I move for the admission of
9 Company 5.

10 ARBITRATOR GABA: Any objection?

11 MR. BALLEW: No.

12 ARBITRATOR GABA: Admitted.

13 (Employer Exhibit 5 was admitted.)

14 Q. (By Mr. Reynvaan) Is that philosophy regarding
15 honesty and truthfulness in the workplace also incorporated
16 in the Collective Bargaining Agreement?

17 A. Yes, it is.

18 Q. How so?

19 A. One of the cardinal infractions listed in the
20 Western Supplement, Article 28, Section 2, is proven
21 dishonesty, and that cardinal infraction is such that there
22 is no need for a prior letter of warning before a
23 termination action would be taken in cases of proven
24 dishonesty.

25 Q. This has already been stipulated. It's Joint 1.

1 But just for purposes of clarification, could you point out
2 for the arbitrator where this section is in the Collective
3 Bargaining Agreement?

4 A. Yes. In the first column, the third paragraph, it
5 lists the cardinal infractions, and proven dishonesty is
6 Subsection 2(a)(1).

7 Q. And what is the significance of something being a
8 cardinal infraction?

9 A. Our Collective Bargaining Unit Agreement requires
10 that there at least be a prior letter of warning before you
11 advance to a more severe discipline of suspension or
12 discharge. Furthermore, the National Master Agreement
13 requires that there is the assumption of innocent until
14 proven guilty, as it is referred to, and the employee would
15 remain on the job until the grievance machinery is
16 exhausted.

17 In these cardinal infractions, the
18 innocent-until-proven-guilty, remain-on-the-job requirement
19 does not remain, and nor is there the need for a warning
20 letter being in effect.

21 Q. So are these considered -- is it fair to say these
22 are considered the most significant infractions at UPS?

23 A. Absolutely.

24 Q. And is the company's prohibition of dishonesty
25 applied in the discipline procedure for employees

1 represented by Teamsters Local 174?

2 A. Yes, it is.

3 Q. Are you aware of other discharges based on
4 dishonesty that have taken place in the Washington
5 district?

6 A. Yes, I am.

7 Q. Which cases are those?

8 A. Well, there have been a number of proven
9 dishonesty cases, unfortunately. I only recall two,
10 though, that actually were deadlocked to arbitration. The
11 others were either sustained or mitigated in some way.

12 Q. Do you recall the names of those cases?

13 A. Yes. The -- when I first got to the district,
14 there was an employee out of our Puyallup building, her
15 name was Michelle Baker, and that case advanced to
16 arbitration where the claim of the union was denied and the
17 discharge was upheld.

18 Q. Do you recall any other cases in the Washington
19 district?

20 A. Yes. Out of our Everett facility, Local 38, an
21 employee by the name of Justin Polson.

22 Q. And what was the nature of dishonesty in that
23 case?

24 A. In the Polson case, Juston was dishonest during an
25 investigatory interview. They were very serious

1 allegations, and he misrepresented himself during the
2 investigatory interview and was terminated under proven
3 dishonesty for his deception during the interview.

4 Q. Did the arbitrator sustain that discharge?

5 A. Yes, the arbitrator did.

6 Q. With regard to the discharge of Ms. Elliott, what
7 were the key factors leading to your decision that
8 discharge was appropriate?

9 A. The key factors obviously were that I -- in
10 viewing the chart notes the doctor prepared and having to
11 accept those as his record of that meeting, it was obvious
12 to me that her medical condition had not changed, that she
13 had proposed to him that there was a deal and, for her to
14 work out this deal and get into a lighter duty job, which
15 she had attempted to do previously, that she would need a
16 full release.

17 I knew that there was no deal in place, and I
18 considered that very serious, that an employee would
19 attempt to return to work without being medically cleared,
20 per se, but, instead, on the basis of a deal.

21 Q. And would -- in your experience, would the company
22 make any deal that would allow an injured employee to
23 return to work?

24 MR. BALLEW: Well, we already objected to that
25 question, but...

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1 ARBITRATOR GABA: How long do you guys want?

2 MR. REYNVAAN: It's up to you guys. An hour?

3 MR. BALLEW: Okay.

4 MR. REYNVAAN: Is that all right?

5 MR. BALLEW: Yeah.

6 ARBITRATOR GABA: We'll see you guys back here at
7 one o'clock.

8 (Lunch recess was taken from
9 11:57 a.m. to 1:00 p.m.)

10 * * *

11

12 MR. REYNVAAN: The company calls Milt Crafton.

13

14 MILT CRAFTON,
15 having been first duly sworn, was examined and testified
16 as follows:

17

18 D-I-R-E-C-T E-X-A-M-I-N-A-T-I-O-N

19 BY MR. REYNVAAN:

20 Q. Mr. Crafton, would you please state and spell your
21 name for the record.

22 A. Milt Crafton, M-i-l-t, C-r-a-f-t-o-n.

23 Q. And would you briefly outline your work experience
24 at UPS.

25 A. Well, I started with UPS in Christmas season of

1 1981, package car driver for just about six years, was
2 promoted into management after that, held various positions
3 in operations of center, manager positions in hub,
4 industrial engineering, a little bit of HR, until my most
5 current position in risk management.

6 Q. And in your current position, what are your
7 responsibilities?

8 A. I'm responsible for the Washington district
9 workers' comp claims. I oversee the management of those
10 cases to our third-party administrator. I direct in daily
11 dealing with our third-party administrator, Gallagher
12 Bassett. As a self-insured company, they handle our
13 claims. I work with the Department of Labor, with our
14 attorneys, and also with occasionally the vendors and the
15 doctors associated with the cases.

16 Q. Do you have any responsibility for tracking
17 individual cases?

18 A. Yes. I track all workers' comp cases.

19 Q. Would you just give a quick overview of UPS'
20 workers' compensation system, just basically the -- how
21 that system works, very briefly?

22 A. Well, if someone is injured and they have a claim,
23 the goal is to get that person the best medical treatment
24 and care and get them up to a situation where they're MMI,
25 which is maximum medical improvement. At that point it may

1 Q. (By Mr. Reynvaan) And did she keep that
2 appointment?

3 A. She didn't go to that appointment. She came in on
4 March 2nd, on an unscheduled appointment.

5 Q. And who did she meet with at that time?

6 A. She saw Dr. Deshpande.

7 Q. Okay. At that point in time, meaning on the 26th
8 when Ms. Sandoval called you, did you do anything else?

9 A. Well, I was concerned that there was a return to
10 work note releasing Marlene to full duty with no
11 restrictions, because it was my understanding that her
12 medical condition was not in place for her to return back
13 to work. So I called Gallagher Bassett, and I talked to
14 Thomas Pak, and I asked -- he was the claims examiner. I
15 asked him to contact Dr. Arntz' office and see if we could
16 get copies of the chart notes and the return to work note.

17 ARBITRATOR GABA: I'm going to slow you down.
18 Gallagher Bassett, you talked to Thomas -- give me that
19 last name.

20 THE WITNESS: Pak.

21 ARBITRATOR GABA: Spell it for me.

22 THE WITNESS: P-a-k.

23 ARBITRATOR GABA: Thank you. Sorry, Counsel.

24 MR. REYNVAAN: Oh, that's fine.

25 Q. (By Mr. Reynvaan) Was that your typical practice

1 questions.

2 MR. REYNVAAN: Oh, I'm sorry.

3
4 R-E-D-I-R-E-C-T E-X-A-M-I-N-A-T-I-O-N

5 BY MR. REYNVAAN:

6 Q. Mr. Crafton, you testified about Ms. Elliott
7 returning to work during the time frame 1/19/2004, date of
8 her injury, and the date of discharge on 3/15/07, correct?

9 A. Yes.

10 Q. And I believe you testified she was reinjured
11 during that time frame?

12 A. Correct.

13 Q. Do you know how many days -- total days of time
14 loss she received during that time frame?

15 A. The entire time frame?

16 Q. Yes, between injury and the date of discharge.

17 A. It was just over 950 days.

18 Q. Would you please refer to -- I just want to ask
19 you a question about Company No. 6. That's the Return to
20 Work Authorization, March 6, '07?

21 A. Yes.

22 Q. I thought you testified on direct examination that
23 the only document you received back from Dr. Deshpande was
24 a car wash job description. But didn't you also receive
25 this?

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1 Q. And is that part of your normal process?

2 A. Yes.

3 Q. And that was done in this case?

4 A. Yes, it was.

5 Q. And following Dr. Bays' receipt of the PCE by
6 Dr. Becker, what did --

7 A. He amended his opinion on Ms. Elliott's return to
8 work capabilities.

9 Q. And is that what's represented in Company 10?

10 A. That is what's represented by this document.

11 MR. REYNVAAN: Okay. I move for the admission of
12 Company 10.

13 ARBITRATOR GABA: Any objection?

14 MR. BALLEW: The same, its relevance.

15 ARBITRATOR GABA: Overruled.

16 (Employer Exhibit 10 was admitted.)

17 Q. (By Mr. Reynvaan) What was -- Mr. Crafton, what
18 was the final resolution of Ms. Elliott's thumb injury
19 claim?

20 A. By preponderance of medical -- objective medical
21 evidence, she was found fixed and stable with a permanent
22 and partial disability, given an impairment rating and
23 ordered an impairment payment, and the claim was closed on
24 July 2, 2007.

25 Q. Is the claim basically over, concluded?

1 A. Supervisor.

2 Q. And how long have you had that position?

3 A. One month.

4 Q. And, now, can you give me a brief history of your
5 employment at UPS.

6 A. I started in 1985 as a person who was a package
7 car preloader. I was a part-time supervisor. I drove a
8 package car for four years. I had numerous operations
9 assignments throughout our district, and I was in the
10 industrial engineering department. I was a manager in
11 Tumwater, Puyallup, and I am now in my current assignment
12 in Tacoma.

13 Q. And as center manager for the Puyallup center, can
14 you tell me what your responsibilities were?

15 A. Basically just overseeing the operations of the
16 drivers and part-time local sorters for the entire
17 operation of Puyallup.

18 Q. While you were at the Puyallup center, did you
19 know Marlene Elliott?

20 A. Very little. She was gone most of the time that I
21 was manager there.

22 Q. And why was she gone most of the time?

23 A. She was off on comp, although she did return
24 enough that we did have contact with each other.

25 Q. Okay. And what was her job at that time?

1 A. It was Article 22.3, unloading the package cars at
2 night and then washing them.

3 Q. Okay. On or about February 26, 2007, what did you
4 understand Ms. Elliott's work status to be?

5 A. She was still off on comp, and, as far as I knew,
6 we were still making contact with her once a week, and that
7 was with my full-time supervisor, Dave Breitenbach.

8 Q. Okay. And did she report to work at the Puyallup
9 center sometime on or around February 26, 2007?

10 A. Yeah. That was on a Monday. And she came in,
11 clocked in, and then I had no idea she was there until a
12 supervisor came up to me and said, Hey, Marlene is here to
13 work. And I asked her to come into my office. She said
14 that she wasn't going to talk to me until her start time,
15 and then after start time I brought her into the office.
16 Should I go on?

17 Q. Okay. No, that's okay.

18 What is the company's policy when an employee
19 returns from workers' comp leave?

20 A. Normally I would know about it ahead of time. The
21 employee would call, let me know that they were released to
22 work. And at that point I usually -- I would call either
23 Milt or Mike Lucke in our safety department to confirm that
24 that person is ready to return to work, and then on the
25 first day they would go through safety training, return to

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1 the airport to pick up packages from Alaska Airlines, bring
2 them back to the hub, BFI, Boeing Airfield, and then they
3 would sort them out as to who would be delivering them
4 where, and you would deliver the packages, and you would
5 report back.

6 Q. And was that full time?

7 A. That was part time.

8 Q. Part time. Okay. How long did you do that
9 part-time job?

10 A. Roughly about five years.

11 Q. Okay. And you started that in 2001?

12 A. No. I had started that -- driving in, I'd say,
13 '97, '98.

14 Q. Okay. We've heard about a combination job, a 22.3
15 job?

16 A. Yeah, Article 22 job.

17 Q. All right. Did you have one of those jobs?

18 A. Yes, I was offered an Article 22 job.

19 Q. And is that when you went full time?

20 A. Yes.

21 Q. When was that?

22 A. I would say 2001, I think.

23 Q. Okay. And the 22.3, it's a combined two part-time
24 jobs to make a full-time position?

25 A. Yes.

1 Q. And what were your two combined part-time jobs?

2 A. When I first went to the building, I was an
3 unloader of trailers. Those are the large trailers that
4 you see the trucks driving around with the tractor
5 trailers. They back them up to a dock, open the door, you
6 unload the contents, make sure their labels are faced up so
7 they can go through the system, and continue to unload
8 until there's nothing else to unload.

9 Q. So is that half of your combo job?

10 A. Yes.

11 Q. What was the other half?

12 A. The other half was car wash.

13 Q. Okay. So that was your first combo job as of
14 2001.

15 A. Yes.

16 Q. Did you ever do any other combo job?

17 A. Yes. I ran the air shuttle from the Pacific
18 Building up to BFI, Boeing Airfield.

19 Q. And was that half of a full-time job?

20 A. Yes.

21 Q. What was the other half?

22 A. Basically, it wasn't even half of a full-time job.
23 You take the air shuttle up. I was due back on the
24 property at 7:00, which is usually about their break time,
25 no later than 7:15. When I'm done, I'm supposed to report

Arbitration 10/2/07

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1 to Dave Breitenbach to see if there's any work to be done
2 in Metro, which is where the trucks, the small trucks -- I
3 don't mean small, but some of the -- all of the brown
4 trucks are backed up and they're unloaded, to see if they
5 need any help, making sure that the lines, which are -- 1
6 through 4 is how they're numbered, 100, 200, 300, 400 --
7 and you make sure all of the trucks are empty. On Fridays
8 you make sure all the packages which are sending-ins are
9 taken off and stuck down below.

10 Q. And when you mentioned 7 o'clock, is that morning
11 or evening?

12 A. Okay. Evening, it would be 1900 hours.

13 Q. Okay. So was that air shuttle work, was that
14 after you'd already started as the trailer unload/car wash?

15 A. Yes.

16 Q. And so when did that take place?

17 A. Roughly in a year. I don't recall the year, Dave.
18 It came up with me with Marty, and another union person
19 asked me did I want to do that air shuttle run because
20 Marty, who was doing it, didn't want to do it anymore.

21 Q. Marty was a coworker?

22 A. Marty is a coworker, another combination worker.

23 Q. Okay. How long did you do the air shuttle work
24 for?

25 A. I'd say over a year and a half. I'm not really

1 sure.

2 Q. Let me get us to 2004 for a sec. Did you suffer
3 an on-the-job injury to your thumb that year?

4 A. Yes, I did, my right thumb.

5 Q. What position were you in?

6 A. I was working -- I just came back from air
7 shuttle. I was told to go to the front to help unload a
8 trailer. I walked into the trailer, started unloading, and
9 the load shifted, and the boxes fell on me.

10 Q. On your thumb?

11 A. On my -- yeah, well, my whole body but the
12 majority of it on my thumb.

13 Q. And then what happened to your thumb?

14 A. It swelled up. I reported to the supervisor that
15 was standing there and another employee that my thumb was
16 hurting. The supervisor stated there was nothing wrong
17 with it, it's okay, just get back to work. I replied and
18 requested, Can I have some ice? At that time they told me
19 I had to fill out an L & I claim. I filled out the L & I
20 claim with Sheila, and I was taken --

21 Q. Who's Sheila?

22 A. Sheila was the safety manager.

23 Q. Okay.

24 A. She filled out with you all these UPS L & I
25 claims, so if you get injured, if you get a paper cut, you

Arbitration 10/2/07

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1 **you directly to get this?**

2 **A. Correct.**

3 MR. REYNVAAN: Okay. Thank you.

4 MR. BALLEW: Nothing further.

5 ARBITRATOR GABA: Ma'am, thank you very much.

6 THE WITNESS: Thank you.

7 ARBITRATOR GABA: Mr. Ballew, your next witness.

8 MR. BALLEW: Can we take a short break?

9 ARBITRATOR GABA: Absolutely, sir.

10 (A brief break was taken.)

11 ARBITRATOR GABA: Okay. Back on the record.

12 Mr. Ballew, any further witnesses?

13 MR. BALLEW: Yeah, Ted Bunstine.

15 * * *

17 TED BUNSTINE,

18 having been first duly sworn, was examined and testified

19 as follows:

21 D-I-R-E-C-T E-X-A-M-I-N-A-T-I-O-N

22 BY MR. BALLEW:

23 **Q. Ted, could you spell your name for the court**
24 **reporter.**

25 **A. Ted Bunstine, B-u-n-s-t-i-n-e.**

1 Q. And are you employed by Local 174?

2 A. Yes, I am.

3 Q. In what capacity?

4 A. I am a business agent and elected president.

5 Q. How long have you held those positions.

6 A. On and off since 1995.

7 Q. And when you were not filling those positions,
8 were you employed at UPS?

9 A. Yes, I was.

10 Q. In what capacity?

11 A. I've been employed at UPS since 1979 for ten years
12 as a package car driver and from 1989 on as a feeder
13 driver.

14 Q. Okay. As your duties as a business agent, were
15 you involved at all in this grievance over termination of
16 Marlene Elliott?

17 A. Yes, I was.

18 Q. Did you in that capacity attend a center-level
19 hearing?

20 A. Yes, I did.

21 Q. What is in the process? What's a center-level
22 hearing? Is that a first step? How can you explain that
23 for us?

24 A. The center-level hearing would be the first step
25 in the grievance procedure after a grievance is filed. And

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1 involved in this case, did Dr. Arntz ever recant his
2 statement -- the statement in the chart notes that
3 Ms. Elliott told him that there was a deal to get her back
4 to work?

5 A. Did he recant his statement?

6 Q. Yeah, did he ever recant it? Did he ever say, Oh,
7 that is not what she told me?

8 A. I'm not sure if I know what you're referring to.

9 Q. Okay. Well, take a look at Company 3. It's a
10 one-page document.

11 A. Okay.

12 Q. 2/21/07.

13 A. Okay.

14 Q. And under History it says -- in the notes it says,
15 "Apparently she has worked out a 'deal'," in quotes, "where
16 if she goes back to work, her union will ultimately help
17 her get into a lighter job."

18 First, were you aware of any such deal?

19 A. No.

20 Q. Was any such deal ever made?

21 A. Not that I'm aware of.

22 Q. Okay. My question is, in this case, including
23 getting additional chart notes from Dr. Arntz, did he ever
24 state that he made a mistake in writing down this, that she
25 had worked out a deal?

Arbitration 10/2/07

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C E R T I F I C A T E

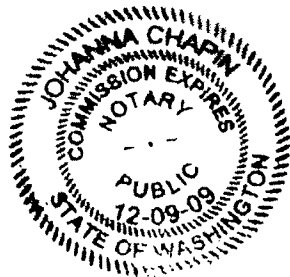
STATE OF WASHINGTON)

COUNTY OF KING)

I, the undersigned Certified Court Reporter and an officer of the Court under my commission as a Notary Public for the State of Washington, hereby certify that the foregoing arbitration was taken before me on October 2, 2007, and transcribed under my direction;

That the witnesses were duly sworn to testify truthfully; that the transcript of the arbitration is a full, true, and correct transcript to the best of my ability; that I am neither attorney for, nor a relative or employee of, any of the parties to the action or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of October, 2007.



Johanna Chapin
 Johanna Chapin, #334, Notary Public
 in and for the State of Washington,
 residing at Seattle, Washington.



Valley Orthopedic Associates

4011 Talbot Road South, #300, Renton, WA 98055
Phone 425-656-5060 • Fax 425-656-5047

ELLIOTT, MARLENE A.

SI: Gallagher Bassett Services
DOI: 01/19/04 - Right Thumb
EMP: United Parcel Services
CLM: W934004

February 21, 2007

FOLLOW-UP

DIAGNOSIS:

1. Status post right thumb MP joint arthrodesis; 6/17/2005.
2. Status post hardware removal, extensor tenolysis and capsulotomy, right thumb IP joint; 1/17/2006.
3. Residual problems of diminished right thumb IP joint range of motion and right thumb function.

HISTORY: Marlene returns for followup. She continues to be troubled by problems of chronic right thumb pain and stiffness. She has been in contact with her union. Apparently she has worked out a "deal", where if she goes back to work her union will ultimately help her get into a lighter job. She informs me that before they can do this however I will need to clear her to return to work without restriction.

I today reviewed job analyses for a "courier" position as well as a "driver" position. The patient would like to be cleared for both of these positions and we will therefore do so today.

PHYSICAL EXAMINATION: Right hand and wrist examination: The patient's right thumb symptoms and findings on examination are found to be without significant change from her visit here on 1/4/2007. Her surgical wounds are well healed. Her right thumb MP joint fusion appears to be quite solid and to be in good overall position. Her right thumb IP joint range of motion ranges through an arc of about 0°-45° of flexion and is stable. Her right thumb basilar joint is mobile and stable. Her distal sensory, motor and vascular function is normal with the exception of an area of sensory loss over the dorsum of her thumb MP joint and proximal phalanx. Her palmar sensation is within normal limits.

IMPRESSION:

1. Solid right thumb MP joint.
2. Moderate stiffness, right thumb IP joint.
3. Problem of diminished sensation and chronic discomfort, right thumb.

DISCUSSION: As noted above, we will today clear the patient to return to the job positions outlined above. We will clear her to return to full duty without restriction as of 2/26/2007. I renewed a prescription for Naprosyn, 500 mg po B.I.D. The patient will discontinue this if she has any GI or other side effects from its use. Her condition is not yet fixed and stable. She will follow up with Greg Parker, PA-C in approximately four weeks. I will see her back in follow up in eight weeks. We will see her back before this if any new problems or concerns arise.

Craig T. Arntz, M.D.

Dictated but not reviewed.

CTA/clc

cc: Gallagher Bassett Services

94-

Exhibit B

Declaration of
L. Solis -29



1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

Laura M. Solis
PHONE (206) 359-3207
FAX (206) 359-4207
EMAIL L.Solis@perkinscoie.com

October 7, 2008

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND REGULAR MAIL**

Ms. Marlene Elliott
30930 - 16th Place S.W., #C
Federal Way, WA 98023

Re: Elliott v. United Parcel Service, Inc.

Dear Ms. Elliott:

I am enclosing the Court's order of October 6, 2008 compelling you to respond to United Parcel Service, Inc.'s First Request for Production of Documents and Second Requests for Production of Documents pursuant to Fed. R. Civ. P. 37(a). We are enclosing another copy of these discovery requests for your convenience.

Please provide your complete responses as soon as possible.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Laura Solis". The signature is written in a cursive, flowing style.

Laura M. Solis

LMS:sh
Enclosures

cc: Michael T. Reynvaan

**Declaration of
L. Solis -30**

Exhibit C

00895-1076/LEGAL14742014.1

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OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates



Laura M. Solis
PHONE (206) 359-3207
FAX (206) 359-4207
EMAIL L.Solis@perkinscoie.com

1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
PHONE: 206.359.8000
FAX: 206.359.9000
www.perkinscoie.com

October 31, 2008

**CERTIFIED MAIL: RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

Ms. Marlene Elliott
30930 - 16th Place S.W., #C
Federal Way, WA 98023

Re: Elliott v. UPS

Dear Ms. Elliott:

This letter will follow up on our telephone conference this morning regarding your failure to respond to UPS's First Requests for Answers to Interrogatories and For Production of Documents and Second Requests for Production of Documents. As you know, on October 6, 2008, the Court ordered you to provide complete answers and responses to these discovery requests. On October 7, 2008, we sent you a letter containing a copy of the Court's order and requested your immediate compliance with the Order.

I called you this morning to let you know that we need to have your complete answers and responses as soon as possible. You told me that you would respond "when I get the time," but refused to state a date or even an estimated time frame. Unfortunately, you cut me off and hung up before we could finish the conversation.

We request that you comply with the Court's order by November 7, 2008. Your refusal to communicate with us regarding your discovery obligations is inappropriate, and violates a direct Court order. If we do not receive your complete answers and responses by November 7, we will be forced to renew our request to the Court for sanctions.

**Declaration of
L. Solis -31**

Exhibit D

00895-1076/LEGAL14865504.1

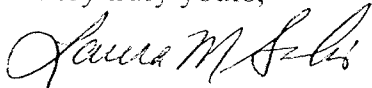
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OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Ms. Marlene Elliott
October 31, 2008
Page 2

Also enclosed is a copy of Defendant's Requests for Admissions to Plaintiff. Your responses to Defendant's Requests for Admissions will be due within 30 days. Your failure respond within the required time will result in the questions being deemed admitted.

Very truly yours,

A handwritten signature in black ink, appearing to read "Laura M. Solis", written in a cursive style.

Laura M. Solis

LMS:sh
Enclosure

cc: Michael T. Reynvaan

**Declaration of
L. Solis -32**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Marlene Elliott
30930 - 16th Pl. SW, #C
Federal Way, WA 98023

COMPLETE THIS SECTION ON DELIVERY

A. Signature

B. Goode

☐ Agent☐ Addressee

B. Received by (Printed Name)

B. Goode

C. Date of Delivery

11-19-08

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7004 1350 0005 3849 7192

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Declaration of
L. Solis -33

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARLENE ELLIOTT, a single individual,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., a
foreign corporation,

Defendant.

No. C07-05453 RBL

FIRST AMENDED NOTICE OF
RESCHEDULED VIDEOTAPED
DEPOSITION UPON ORAL
EXAMINATION OF MARLENE ELLIOTT

TO: MARLENE ELLIOTT, Plaintiff

YOU WILL PLEASE TAKE NOTICE that the deposition of the following individual will be taken upon oral examination at the instance and request of defendant United Parcel Service, Inc. in the above-entitled action, before a Notary Public, at the offices of Perkins Coie, LLP, 1201 Third Avenue, Suite 4800, Seattle, WA 98101:

Deponent

Marlene Elliott

Date and Time

December 18, 2008, 9:30 a.m.

The testimony will be recorded by stenographic means and videotaped. The oral examination will be subject to continuance or adjournment from time to time or place to place

**Declaration of
L. Solis -34**

Exhibit E

1ST AM. NOTICE OF DEPOSITION UPON
ORAL EXAMINATION OF MARLENE
ELLIOTT (NO. C07-05453) – 1

00895-1076/LEGAL14623629.2

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 until completed, and will be taken on the ground and for the reason that the witness will give
2 evidence material to defendant's case.
3
4

5 DATED: December 10, 2008
6
7

PERKINS COIE LLP

8 By: 
9

10 Michael T. Reynvaan, WSBA No. 12943

11 MReynvaan@perkinscoie.com

12 Laura M. Solis, WSBA No. 36005

13 LSolis@perkinscoie.com

14 1201 Third Avenue, Suite 4800

15 Seattle, WA 98101-3099

16 Telephone: 206.359.8000

17 Facsimile: 206.359.9000
18

19 Attorneys for Defendant

20 UNITED PARCEL SERVICE, INC.
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50 Declaration of
51 L. Solis -35

NOTICE OF DEPOSITION UPON ORAL
EXAMINATION OF MARLENE ELLIOTT (NO.
C07-05453) – 2

00895-1076/LEGAL14623629.2

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing FIRST AMENDED NOTICE OF RESCHEDULED VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF MARLENE ELLIOTT to the following via U.S. First Class and Certified Mail, postage prepaid, on December 10, 2008:

Ms. Marlene Elliott
30930 - 16th Place S.W., #C
Federal Way, WA 98023
Plaintiff



Steve Herchelrode
Legal Secretary

**Declaration of
L. Solis -36**

00895-1076/LEGAL14623629.2

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000